FINAL – 10-5-20

TELECOMMUNICATIONS FACILITY FRANCHISE AGREEMENT

This **Telecommunications Facility Franchise Agreement** ("Agreement") is entered into this ___ day of _____, 2020, by and between the City of Alexandria, Virginia, a municipal corporation of the Commonwealth of Virginia (the "City"), and Crown Castle Fiber LLC, a New York limited liability company (the "Franchisee").

RECITALS:

A. The City is responsible for management of the Public Rights-of-Way, as hereinafter defined, and performs a wide range of vital tasks necessary to preserve the physical integrity of Public Rights-of-Way, to control the orderly flow of vehicles, to promote the safe movement of vehicles and pedestrians, and to manage a number of gas, water, sewer, electric, cable television, telephone, telecommunications, and other facilities that are located in the Public Rights-of-Way.

B. The City has the authority to regulate the time, location, and manner of attachment, and the installation, operation, and maintenance of telecommunications facilities located in the Public Rights of-Way.

C. The Franchisee is in the business of transporting signals by means of telecommunications facilities.

D. The Franchisee desires to attach, install, control, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove Franchisee's Facilities, as hereinafter defined, on specified facilities located in the Public Rights-of-Way and owned by third parties.

E. Subject to applicable law, the Franchisee is willing to compensate the City for permission to use the Public Rights-of-Way for the installation of the Franchisee's Facilities upon the Approved Poles.

F. The City is willing to permit the Franchisee to enter the Public Rights-of-Way in order to use and occupy the Approved Poles, upon the terms and conditions set forth herein.

AGREEMENT:

Now, therefore, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Definitions. The following definitions shall apply to the provisions of this Agreement:

1.1 "Affiliate" means any entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Franchisee. The term "control," as used in

this definition, means the right and power to direct or cause the direction of the management and policies of an entity, in whatever manner exercised.

1.2 "Approved Equipment" means a Small Cell Facility to be installed and operated by Franchisee, whose installation in the Public Rights-of-Way has been approved by the City pursuant to this Agreement.

1.3 "Approved Pole" means (i) any Standard Design Pole, and (ii) any Individual Request Pole that has been approved by the City Engineer and the Director in accordance with Section 4.2.

1.4 "Available Pole" means any existing Light Pole or Utility Pole that is suitable for the installation of Franchisee's Facilities.

1.5 "City Engineer" means the Director of the Department of Transportation and Environmental Services or designee.

1.6 "City Facilities" means any City-owned property, other than the Public Rights-of- Way, whether or not affixed to the land.

1.7 "Effective Date" means the date this Agreement is signed on behalf of the City, with the approval of the City Council.

1.8 "Director" means the Director of Planning and Zoning or designee.

1.9 "Franchisee" means Crown Castle Fiber LLC, a New York limited liability company.

1.10 "Franchisee's Facilities" means (i) any Approved Pole installed in the Public Rights-of-Way pursuant to this Agreement; (ii) any Approved Equipment that is attached to an Approved Pole; or (iii) any Approved Equipment installed elsewhere in the Public Rights-of-Way pursuant to this Agreement.

1.11 "Individual Request Pole" means a Light Pole, Utility Pole, or Stand-Alone Pole that is not a Standard Design Pole, but whose design and specifications have been approved by the City Engineer and the Director as suitable for attachment in accordance with Section 4.4 of this Agreement.

1.12 "Light Pole" means any structure that supports a light fixture that is: (i) installed for the purpose of lighting a street or roadway; (ii) located in the Public Rights-of- Way; (iii) owned by a public utility; and (iv) no more than fifty (50) feet in height above ground level.

1.13 "New Pole" means a Light Pole, Utility Pole, or Stand-Alone Pole that does not exist at the time of Franchisee's application to the City for approval of the installation of Facilities on such structure.

1.14 "Public Rights-of-Way" means the space in, upon, above, along, across, over,

and below the public streets, roads, lanes, courts, ways, alleys, and boulevards, including all public street easements, as the same now exist or may hereafter be established, that are under the legal jurisdiction and physical control of the City or of the Virginia Department of Transportation ("VDOT").

1.15 "Replacement Pole" means a Standard Design Pole or Individual Request Pole that will replace an existing Light Pole or Utility Pole and will be used to support a Small Cell Facility. A Replacement Pole is not a New Pole.

1.16 "SCC" means Virginia State Corporation Commission.

1.17 "Services" means those wireless communications services provided by Franchisee.

1.18 "Small Cell Facility" means a wireless facility that meets each of the following conditions:

(a) The facility:
(i) Is mounted on structures 50 feet or less in height including any antennas; or
(ii) Is mounted on structures no more than 10 percent taller than other adjacent structures; or
(iii) Does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
(b) Each antenna associated with the deployment, excluding ancillary equipment, is no more than three cubic feet in volume;
(c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
(d) Does not require antenna structure registration under Federal Communications Commission regulations; and
(e) Does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Federal Communications Commission regulations.

1.19 "Stand-Alone Pole" means a support structure that will be owned by the Franchisee and that will support only the Franchisee's Facilities.

1.20 "Standard Design Pole" means a Light Pole, Utility Pole, or Stand-Alone Pole whose design and specifications have been approved in advance by the City Engineer and the Director and is specifically listed or described in Exhibit A.

1.21 "Utility Pole" means any structure other than a Light Pole that is (i) located in the Public Rights-of-Way; (ii) owned by a public utility; (iii) used to support electrical, telecommunications, or cable television lines; and (iv) no more than fifty (50) feet in height above ground level.

Section 2. Term.

2.1 Term and Extension. The term of this Agreement is ten (10) years ("Initial Term"), commencing on the Effective Date, unless this Agreement is earlier terminated in accordance with the provisions hereof. After the Initial Term, the term shall automatically be extended for up to three (3) additional periods of five (5) years each (each an "Extension Term") unless Franchisee provides written notice to the City at least ninety (90) days prior to the end of the Initial Term or then-current Extension Term that Franchisee does not elect to extend the Agreement. As used herein the "Term" shall mean the Initial Term and any applicable Extension Terms.

Section 3. Scope of Agreement.

3.1 Non-Exclusive Permission. The City hereby grants to the Franchisee the permission, on a non-exclusive basis, to: (i) attach Approved Equipment to Available Poles; (ii) install New Poles or replace existing ones in the Public Rights-of-Way, as permitted by this Agreement; (iii) control, operate, maintain, repair, replace, reattach, reinstall, relocate, and remove Approved Poles and Approved Equipment installed on Approved Poles for the limited purpose of providing Services; (iv) make electrical utility connections in the Public Rights-of-Way as required for the purpose of operating the Franchisee's Facilities, subject to approval by the City of the locations of such electrical utility connections; and (v) to enter the Public Rights-of-Way for the purpose of performing work permitted by the foregoing clauses (i) - (iv). The permission granted by this Section 3.1 is subject to the terms of this Agreement, all applicable City permitting requirements, all other applicable laws including without limitation the City Zoning Ordinance, and all VDOT requirements of whatever nature.

3.2 Permitted Services. The Franchisee's Facilities shall be used exclusively by the Franchisee solely for the rendering of Services. If the Franchisee wishes to use the Franchisee's Facilities for the purpose of offering services not specifically described in, or authorized by, this Agreement, then the Franchisee shall notify the City Engineer in writing before providing any such additional proposed services. If the City Engineer does not approve of proposed services set forth in any such notice, the City shall notify the Franchisee in writing that the City requires an amendment to this Agreement, or another form of authorization, before the Franchisee may provide such services, subject to applicable law. Such approval or authorization shall not be unreasonably withheld, delayed, or conditioned.

3.3 Electricity. The City shall have no responsibility for providing electricity to the Franchisee's Facilities, nor any liability related to the loss or unavailability of power for such use.

3.4 No Interference. The Franchisee's use of any Approved Poles shall not materially interfere, in any manner, with the existence, operation, or use of the Public Rights-of-Way or the City Facilities or the property of any third party, including, without limitation

sanitary sewers, storm sewers and drains, water mains, gas mains, and aerial and underground electric, telephone, or cable television facilities, except as expressly permitted by this Agreement or by express permission of the respective owner.

3.5 Franchise Subject to Rights of City and of Others; No Property Interest. The permission granted to the Franchisee pursuant to this Agreement shall be: (i) exercised by the Franchisee at the Franchisee's sole risk and expense; (ii) subject to, and subordinate to, the rights of the City to use the Public Rights-of-Way and City Facilities exclusively or concurrently with any other person; and, (iii) subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, claims of title, and rights (whether recorded or unrecorded) of others that may affect the Approved Poles, specifically including all recorded or unrecorded rights of VDOT. Nothing in this Agreement shall be deemed to grant, convey, create, or vest any real property interest in the Franchisee, including any fee or leasehold interest, easement, or vested right. Nothing herein contained shall be construed to require or compel the City to maintain any particular portion of the Public Rights-of-Way for a period longer than that required by the City's needs. Nothing herein shall restrict the City from exercising its authority to vacate, abandon, or discontinue use of any portion of the Public Rights-of-Way and request the relocation or removal of the Franchisee's Facilities therefrom subject to the procedures, time periods, and remedies established within Section 5.9.

Section 4. Approval of Facilities and Equipment.

4.1 Approval Required. This Franchise grants the Franchisee the right to install only Approved Poles and Approved Equipment in accordance with all city regulations and aesthetic guidelines, as amended. This Franchise does not authorize the Franchisee to use or attach any equipment to any City Facilities, other than the Public Rights-of-Way, including without limitation any street light poles, utility-type poles, or traffic signal poles owned by the City.

4.2. Replacement of Available Poles.

4.2.1 The Franchisee may replace existing Available Poles with Standard Design Poles anywhere in the City without further review of their design or technical specifications by the City Engineer or the Director. The Franchisee shall apply for all permits or authorizations required by the City, and the City shall review such applications subject to all requirements and standards other than design and technical specifications.

4.2.2 If the Franchisee determines that neither an existing Available Pole nor a Standard Design Pole will meet its technical requirements at a particular location, the Franchisee may propose to replace an Available Pole with an Individual Request Pole, pursuant to Section 4.4.

4.2.3 Only Standard Design Poles approved for installation in one of the City's historic preservation areas consistent with Board of Architectural Review guidelines and designated as such on Exhibit A may be used to replace Available Poles in such areas.

4.3 New Poles. The Franchisee may install New Poles only with the prior approval of the City. If a proposed New Pole is a Standard Design Pole, the Franchisee shall apply for all permits or authorizations required by the City, and the City shall review such applications in accordance with Section 4.2. If a proposed New Pole is not a Standard Design Pole, then Section 4.4 shall apply.

4.4 Individual Request Poles. The Franchisee may install Individual Request Poles only with the prior approval of the City. The Franchisee shall submit the required application or applications and the City shall consider each application and grant or deny each application in accordance with applicable law. The Director shall evaluate the design and technical specifications of such an application in accordance with all applicable City requirements and standards.

4.5 Approval of Standard Design Poles. The Franchisee may at any time request that a new or additional type of Light Pole, Utility Pole, or Stand-Alone Pole be deemed a Standard Design Pole by submitting an application to the Director. If the Director determines that the proposed design and specifications meet the City's applicable safety standards and aesthetic guidelines, the Director shall designate the proposed new type as a Standard Design Pole and Exhibit A shall be amended accordingly. The Director shall have the discretion to approve a new type of Standard Design Pole only for installation in limited or designated areas of the City.

4.6 Equipment. Only Approved Equipment may be attached to Approved Poles or otherwise installed in the Public Rights-of-Way. The Franchisee shall apply for all permits or authorizations required by the City in connection with any proposed installation of any Small Cell Facility, and the City shall review such applications subject to all design standards, technical specifications, and other requirements. Upon issuance of all such permits and authorizations, the applicable Small Cell Facility shall be deemed Approved Equipment.

Section 5. Installation of Franchisee's Facilities.

5.1 Installation of Approved Equipment on Approved Poles. Approved Equipment shall be installed only on Approved Poles or in the Public Rights-of-Way and only in accordance with accepted industry standards for such installation, including applicable safety codes. Any installation method or configuration that materially differs from industry standards shall not be employed without the prior written permission of the City Engineer. If Franchisee installs any equipment other than Approved Equipment without the prior written approval from the City Engineer, the Franchisee, upon notice from the City Engineer, shall promptly remove such equipment at Franchisee's sole cost and expense subject to the procedures, time periods, and remedies established in Section 5.9.

5.2 Installation of New Poles and Replacement Poles. New Poles and Replacement Poles shall be installed only in accordance with the accepted industry standards for such installation, including applicable safety codes. Any installation method or configuration that materially differs from industry standards shall not be employed without the prior written permission of the City Engineer.

5.3 As-Built Drawings. Upon completion of any installation on any Approved Pole, the Franchisee shall promptly deliver to the City Engineer, in hard copy and electronic format, documentation, in substance and in form acceptable to the City Engineer, clearly identifying each of the Approved Poles to which the Franchisee's Facilities have been attached, all of the Franchisee's Facilities attached to each such Approved Pole, and any portions of the Public Rights-of-Way occupied by Franchisee's Facilities in connection with the installation on such Approved Pole. The foregoing information shall be delivered within ten (10) days after (i) completion of installation of Franchisee's Facilities at any given location, and (ii) completion of any changes to the Franchisee's Facilities located in the Public Rights-of-Way that render the information previously provided to the City Engineer under this Section 5.3 inaccurate or incomplete.

5.4 Attachment and Access Agreements. Prior to beginning any construction or installation of Franchisee's Facilities, Franchisee shall, at its sole cost and expense, submit to the City evidence reasonably demonstrating that the applicable public utility company has granted Franchisee the right to attach Franchisee's Facilities to Available Poles occupying the Public Rights- of-Way, or to install Franchisee's Facilities in conduit occupying the Public-Rights-of-Way.

5.5 Plans, Specifications and Maps. Before beginning any construction or installation of Franchisee's Facilities, Franchisee shall, at its sole cost and expense, prepare and submit, together with payment of all required fees, applications for all permits required by the City in connection with the types of facilities the Franchisee proposes to install and the nature of the work required. All plans and specifications required by the respective applications, detailed maps showing the planned construction, the size, the location, and number, and all other relevant details regarding the placement of the Franchisee's Facilities proposed to be located on any Available Pole or in any portions of the Public Rights-of-Way shall be prepared by the Franchisee at its sole cost and expense. The City Engineer may, in writing, condition approval of plans and specifications on Franchisee meeting reasonable requirements necessary to protect the public health, safety, and welfare of the traveling public. The City Engineer may also condition approval of plans and specifications on Franchisee's agreement to use an alternate location for the Franchisee's Facilities when the City Engineer reasonably determines that it is necessary to avoid conflict with public safety as well as other permitted uses in, or future public needs of, the Public Rights-of-Way in the vicinity of any Approved Pole or other proposed location for Facilities. The Franchisee shall, at its sole cost and expense, submit traffic control plans related to installation of Franchisee's Facilities, for approval by the City Engineer. The City Engineer may, at any time, inspect the attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of Franchisee's Facilities. The Franchisee shall pay all fees required by this Agreement or the City Code, prior to the issuance of any permit for the installation and construction of Franchisee's Facilities. All work within the Public Rights-of-Way shall be performed in compliance with all requirements of the City (and VDOT, if applicable) and the owner of the respective Approved Poles, as the case may be, and all plans and permits approved and issued by the City (and VDOT, if applicable), respectively. The Franchisee agrees that the City may require the Franchisee to obtain generally applicable single use permits and pay generally applicable fees that are charged for similar work by public utility companies for such permits, pursuant to the City's rules and regulations, for each of the following activities: (i) work within the travel lane or work which requires closure of a public Right-of-

Way; (ii) disturbance of the pavement, shoulder, roadway, or ditch line; and (iii) placement on limited access rights-of-way. The City may also require the Franchisee to take specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof.

5.6 Costs and Expenses Borne by Franchisee. The Franchisee shall bear all costs incurred by Franchisee in connection with the Franchisee's planning, design, construction, repair, modification, disconnection, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Franchisee's Facilities. The Franchisee shall waive any claim against the City for, any movement in, damage to, repair of, or deterioration of, Franchisee's Facilities due to (i) repair, maintenance and/or failure/collapse of any street or highway improvements, sanitary sewers, storm sewers and drains, water mains, gas mains, poles, aerial and underground electric and telephone wires, cable television facilities, and other telecommunications, utility or City-owned property, or (ii) any other improvements or works proximate to Franchisee's Facilities. Franchisee also agrees to bear the costs of repair or replacement of Franchisee's Facilities regardless of whether or not such damage is directly or indirectly attributable to the installation, operation, maintenance, repair, or upgrade work on the Franchisee's Facilities, unless the damage results solely from the negligence, willful misconduct, or breach of this Agreement by the City, its officers, employees, or agents.

5.7 Undergrounding. Franchisee shall place facilities underground as and when required by Section 5-3-3 of the City Code.

5.8 Installation in Public Rights-of-Way. To the same extent required of all similarly-situated occupants of the Public Rights-of-Way, no equipment, facility or structure shall be installed by or on behalf of Franchisee at any location in the Public Rights-of-Way, unless Franchisee shall have first obtained all required permits and permissions and complied with all generally applicable City ordinances, regulations and policies, including but not limited to, all applicable provisions of the City Code pertaining to underground utility facilities and the City Zoning Ordinance.

5.9 Improvements. The Franchisee shall promptly modify, repair, replace, relocate, restore, remove, maintain, reattach, reinstall, underground, or refinish Franchisee's Facilities, Public Rights-of-Way, street or highway improvements, or other City or third party facilities, including, without limitation pavement, streets, alleys, sidewalks, sewer pipes, water pipes or other pipes, located in the Public Rights-of-Way or any other public property, real or personal, belonging or dedicated to the City to the extent the same are disturbed or damaged as a result of acts of Franchisee or its agents in connection with the operation of the Franchisee's Facilities ("Improvements"). Franchisee shall promptly perform Improvements upon receiving notice from the City. All Improvements shall be performed at Franchisee's sole cost and expense. If Franchisee shall fail to perform any Improvement in accordance with the terms of this Agreement, the City may cure the default itself, and may charge to Franchisee the reasonable cost the City incurs in curing the default; provided that, prior to performing any such work to cure a default, the City shall give Franchisee written notice of the default and a period of ten (10) business days from the date of the notice in which to initiate action to cure the default and a period of 30 days in which to complete the cure. In addition, the foregoing 10-day and 30-

day periods will be extended by the City Engineer for a reasonable amount of time if a cure of the default cannot reasonably be commenced, or the default cannot reasonably be cured, within such periods respectively, and Franchisee has diligently pursued commencement of, or completion of, a cure during the applicable time period ("Cure Period"). Notwithstanding the provisions of this Section 5.9, if the City Engineer determines, in his sole discretion consistent with applicable law, that the failure to perform or complete any Improvement threatens the public health, safety, or welfare, the City may commence the Improvement and assess its costs upon Franchisee, as provided herein. Prior to commencing such work, the City shall make a reasonable effort to provide Franchisee with telephonic notice and an opportunity to promptly perform or complete the Improvement itself. In the event Franchisee is unable to, or otherwise fails to, promptly perform or complete the Improvement and the City performs the repair work City shall, immediately upon completion of the work, provide Franchisee with written notice of the work it has performed, and also shall, reasonably soon after the completion of the work, provide Franchisee with a statement of the City's reasonable costs and expenses incurred in performing the work. Franchisee shall promptly repave or resurface the Public Rights-of-Way in accordance with the then-current standards set forth by the City Engineer if there are any street cuts or other disturbances of the surface of the Public Rights-of- Way as a result of any Improvements.

5.9.1 Any costs assessed upon Franchisee under this Section 5.9 shall be paid to the City within 30 days of the assessment.

5.9.2 The obligation of the Franchisee to promptly act at its sole cost and expense, the default and cure procedures, the time periods, and the City's right of self-help, all as set forth in this Section 5.9, shall apply to those matters addressed in Sections 5.1, 7.3, 7.4, 7.5, 11.1 and 11.3, as if such matters constitute "Improvements" as defined herein.

5.10 No Liens. Franchisee shall not suffer, permit, or give cause for the filing of any lien against the City, the Public Rights-of-Way, or any City Facilities, or perform any other act that encumbers or might encumber the City's title or subject the City Facilities, the Public Rights-of-Way, or any part thereof to any lien. Franchisee shall promptly pay all persons furnishing labor, materials, or services with respect to any work performed by or for the Franchisee on or with respect to the City, the Public Rights-of-Way, or any City Facilities. If any lien is filed against the City, the Public Rights-of-Way, or any City Facilities, by reason of any work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to or for the benefit of Franchisee, Franchisee shall promptly cause the lien to be discharged of record. If Franchisee fails to cause the lien to be discharged within thirty (30) days after being notified of the filing thereof, then in addition to any other rights and remedies available under the terms of this Agreement or under applicable law, the City may cause the lien to be discharged by paying the amount claimed to be due or posting a bond, and the Franchisee shall reimburse the City within thirty (30) days following the City's demand for all costs incurred in connection therewith, including without limitation reasonable attorneys' fees.

Section 6. Fees Paid to the City.

6.1 Administrative Fee. Upon the Effective Date, the Franchisee shall make a one-

time initial payment to the City of Seven Hundred Fifty Dollars ($750.00) (the "Administrative Fee") as consideration for the grant of this Agreement and to defray the City's administrative costs incurred in connection with the negotiation and approval of this Agreement.

6.2 Form of Payments. Payments by the Franchisee of all sums required to be paid to the City pursuant to this Agreement shall be paid to "Treasurer, City of Alexandria, Virginia" at the following payment address (or such other address at the City may provide from time to time on 30 days' advance written notice to Franchisee):

City of Alexandria
Treasury Division
PO Box 323
Alexandria, Virginia 22313

6.3 No Waiver. Acceptance by the City of any payment due hereunder shall not be deemed to be a waiver by the City of any breach of this Agreement. The acceptance by the City of any such payment shall not preclude or prohibit the City from thereafter establishing that a larger amount in fact was due, or from collecting any balance due to the City.

6.4 No Relief From Other Fees and Taxes. The fees required by this Section 6 shall be in addition to, and not in lieu of, all fees and taxes required by the City, and all other amounts Franchisee may be required to pay the City by law, ordinance, or other agreement.

Section 7. Maintenance, Removal and Relocation of Franchisee's Facilities.

7.1 Limited Risk or Liability to City. The Franchisee hereby acknowledges and assumes all responsibility, financial and otherwise, for the Franchisee's permitted use of the Approved Poles and Franchisee's use of the Public Rights-of-Way, and the planning, design, construction, repair, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of the Franchisee's Facilities, which shall be undertaken without risk to, or liability of, the City. All planning, design, construction, repair, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement work shall be performed at Franchisee's sole cost and expense and in accordance with applicable law, and any work affecting the Public Rights-of-Way shall be performed using City (and VDOT, if applicable) construction standards.

7.2 Maintenance of Franchisee's Facilities. Franchisee shall ensure that Franchisee's Facilities are maintained at all times in a clean and safe condition and location, in good repair, and free of all material defects. Franchisee shall use reasonable care at all times in installing, maintaining, relocating, removing, repairing, and replacing Franchisee's Facilities. The planning, design, construction, repair, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement of Franchisee's Facilities shall be performed by experienced and properly trained maintenance and construction personnel in accordance with accepted industry standards and using commonly-accepted methods and/or devices to reduce the likelihood of damage, injury or nuisance to persons or entities,

including the public.

7.3 Removal/Relocation of Franchisee's Facilities. If the City Engineer, in the City Engineer's reasonable discretion, determines that removal, relocation, or reconfiguration of any portion of the Franchisee's Facilities is necessary in order to protect the public health, safety, or welfare, then the Franchisee shall, at its sole cost and expense, remove, relocate, or reconfigure such portion of Franchisee's Facilities subject to the procedures, time periods, and remedies established in Section 5.9. Should the City Engineer determine that the public health, safety or welfare require that the City undertake immediate maintenance, repair or other action as to the Franchisee's Facilities then the City may do so and the Franchisee shall be responsible for all reasonable expenses. In such an emergency, the City Engineer may take the measures required by Franchisee under this Section without prior notice to Franchisee, provided that the City Engineer will (i) make reasonable efforts to provide prior verbal notice to the Franchisee of such measures; and (ii) provide written notice to Franchisee within 10 days of City's taking such measures.

7.4 City Removal of Franchisee's Facilities. If Franchisee does not protect, temporarily disconnect, relocate, or remove Franchisee's Facilities in accordance with the applicable procedures and time periods specified in Section 5.9, then the City may perform the same to the Franchisee's Facilities and charge the Franchisee for the reasonable cost thereof. Upon Franchisee's request, and subject to Section 7.5, by written notice to Franchisee, City may approve the abandonment in place of specified Franchisee's Facilities.

7.5 Abandonment of Franchisee's Facilities. If any portion of Franchisee's Facilities is out of service for a period of one (1) year or more, then Franchisee shall promptly notify the City in writing of such fact and such Facilities shall be considered abandoned. Franchisee shall promptly remove the Facilities at the Franchisee's cost and expense subject to the procedures, time periods, and remedies established within Section 5.9, except that notice shall be deemed given upon receipt by City. The Franchisee shall comply with all requirements of any rules governing the abandonment of Franchisee's Facilities that may be adopted by the City in accordance with Virginia Code § 15.2-2316.4(B)(6).

7.6 Damage to Property. In exercising the permissions granted by this Agreement, the Franchisee shall exercise the customary level of care to avoid causing damage to the Public Rights-of-Way and nearby real and personal property of the City and of third parties. The Franchisee hereby assumes responsibility and the risk for all loss, expense, and liability arising out of any such damage. The Franchisee shall make an immediate verbal report to the City Engineer (currently: Yon Lambert) of the occurrence of any such damage by calling at 703.746.4025 (main number at T&ES) and via email to yon.lambert@alexandriava.gov. If requested by the City after such initial report, the Franchisee shall, promptly and in all events within five (5) business days after occurrence, report to City, in writing, every incident or accident causing, or resulting in, property damage or any personal injury resulting from, or arising out of, any of the Franchisee's activities or permissions under this Agreement. Such report shall contain the names and addresses of the persons and entities involved, a statement of the factual circumstances, the date and hour, the names and addresses of all witnesses, and other pertinent information required by the City pertaining to the incident or accident, where reasonably available.

7.7 Removal of Franchisee's Facilities. The Franchisee may remove any of the Franchisee's Facilities at any time, subject to applicable City permitting requirements, if any.

Section 8. Insurance.

8.1 Policy Limit. Franchisee, at its sole expense, shall carry and maintain a policy of commercial general liability insurance, throughout the Term of this Agreement, providing coverage for claims arising from the exercise of the permission granted hereunder by City. Such insurance coverage shall have policy limits of not less than Five Million Dollars ($5,000,000) annual aggregate, which may be met by any combination of primary and excess or umbrella insurance. The insurance policy and policy limits shall not operate as a limit of Franchisee's liability to the City under this Agreement, nor as a limit of Franchisee's duty of indemnification hereunder.

8.2 Certificates; Noncancellation; Additional Insureds. Prior to the beginning of the Term, and annually as the insurance renews, Franchisee shall furnish the City with certificates of insurance and endorsements as required by this Agreement. Each policy shall provide, among other things, that the actions or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy. The insurance required to be carried by Franchisee herein shall be with an insurance company licensed or authorized to do business in the Commonwealth of Virginia and rated not lower than A-X in the A.M. Best Rating Guide. Such insurance shall provide that the policy shall provide at least thirty (30) days' prior written notice to the City of cancellation or non-renewal, except for non-payment of premium in which case a ten (10) days' notice shall apply. The City, its elected and appointed officials, officers, employees, and agents shall be named as additional insureds under all coverage required to be maintained by the Franchisee hereunder and the certificate of insurance must so state. If the policy requires an endorsement to add the indicated parties as additional insureds, the endorsement must accompany the certificate of insurance. Coverage afforded under this Section shall be primary as respects the City, its elected and appointed officials, officers, employees, and agents. The following definition of the term "City" applies to all policies issued under this Agreement:

> "The City Council of the City of Alexandria, Virginia. any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Alexandria, Virginia, or one in which controlling interest is vested in the City; or a Constitutional Officer of the City."

8.3 Cancellation. Upon written notice from its insurer(s) Franchisee shall provide the City with at least thirty (30) days prior written notice of cancellation of any required coverage for any reason other than non-payment of premium in which a ten (10) days' notice shall apply. Should the insurance company's policy not provide for notice of material change or reduction in coverage until thirty (30) days prior written notice has been given to the City, it shall be the

responsibility of the Franchisee to provide such notice.

8.4 Coverage Limits. Franchisee shall maintain the types of coverages and minimum limits indicated below, unless the City Risk Manager approves a lower amount, in his sole discretion. The required minimum limits may be met by any combination of primary and excess or umbrella policies. These minimum amounts of coverage will not constitute any limitations or cap on Franchisee's indemnification obligations under this Agreement. The City, its officers, agents, and employees make no representation that the limits of the insurance specified to be carried by Franchisee pursuant to this Agreement are adequate to protect Franchisee. If Franchisee believes that any required insurance coverage is inadequate, Franchisee will obtain such additional insurance coverage, as Franchisee deems adequate, at Franchisee's sole expense.

8.4.1 Commercial General Liability Insurance. $2,000,000 combined single-limit coverage with $5,000,000 general aggregate covering all premises and operations and including bodily injury, property damage, personal injury, completed operations, contractual liability, independent contractors and products liability.

8.4.2 Automobile Liability. $2,000,000 combined single-limit per accident for bodily injury and property damage.

8.4.3 Workers' Compensation and Employer's Liability. Virginia Statutory Workers' Compensation coverage including Virginia benefits and employer's liability with limits of $500,000.

8.5 Default. Failure to maintain any of the required insurance coverages shall be deemed a default for purposes of Section 11.

8.6. Insurance to be Primary. Insurance coverage provided to the City as an additional insured shall be primary insurance and other insurance maintained by the City, its officers, agents, and employees shall be excess only and not contributing with the insurance provided pursuant to this Agreement. Franchisee's insurance shall also waive any rights of subrogation against the City, its officers, agents, and employees as it pertains to the scope of this Agreement for any claims resulting from Franchisee's work or service.

8.7 No Waiver. No acceptance or approval of any insurance by the City shall be construed as relieving or excusing the Franchisee from any liability or obligation imposed by the provision of this Agreement.

Section 9. Indemnification and Bonds.

9.1 Indemnification. The Franchisee hereby agrees to indemnify, protect, defend (with counsel reasonably acceptable to the City), and hold harmless the City, its elected and appointed

officers, officials, employees and agents, from and against any and all claims, demands, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, actions of any kind, and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs of defense), caused by the negligence, willful misconduct, or breach of this Agreement by Franchisee, except that to the extent that such damages or loss or caused by the negligence or breach of this Agreement by City, its elected or appointed officials, officers, employees, or agents. The Franchisee also agrees to hold harmless and indemnify the City from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the Franchisee, for payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding to the extent arising directly from the Franchisee's failure to comply with any and all laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect ("**Environmental Claims**"). The Franchisee agrees to hold harmless and indemnify the City from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the Franchisee, for payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Environmental Claims, to the extent arising from hazardous substances brought into the Public Rights-of-Way by the Franchisee. The foregoing indemnification for environmental claims specifically includes reasonable costs, expenses, and fees incurred in connection with any clean-up, remediation, removal, or restoration work required by any governmental authority. The provisions of this Section 9.1 will survive the expiration or earlier termination of this Agreement

9.2 Acts of Contractors. The Franchisee shall be liable to the City and to others for the acts and omissions of the Franchisee's employees, agents, contractors, and subcontractors.

9.3 Waiver by Franchisee. The Franchisee waives all claims, demands, causes of action, and rights that Franchisee may assert against the City, its elected and appointed officers, officials, employees, and agents on account of any loss, damage, or injury to any of the Franchisee's Facilities, except to the extent caused by the negligent actions, willful misconduct, or breach of this Agreement of the City, its elected or appointed officials, officers, employees, or agents.

9.4 City Not Liable. The City shall not be liable to the Franchisee or to any other person or entity for any interruption in the Franchisee's Services or for any interference with the operation of the Franchisee's Facilities arising from the City's use of City Facilities or the Public Rights-of-Way or from any other action of the City, its officers, agents and employees, provided that the foregoing is not caused by the negligence, willful misconduct, or breach of this Agreement by the City.

9.5 No Consequential Damages. In no event shall the City or any of its elected or appointed officials, officers, or employees be liable to the Franchisee, or the Franchisee or any of its employees, agents, contractors, and subcontractors be liable to the City, or shall any of the foregoing be liable to any third party, for any consequential, exemplary, special, indirect, punitive, reliance, incidental, or similar damages, including but not limited to any lost profits, data, savings, or revenues, arising out of, or in connection with, this Agreement or any other

agreement the Franchisee may have with any of its subscribers, whether under tort, contract, or other theories of recovery, even if a party has been advised of the possibility of such negligence or damages. This Agreement is for the benefit of the Franchisee and the City and not for the benefit of any other party. No provision of this Agreement shall create, or be construed to create for the public or any member thereof, or any other person or business, rights as a third party beneficiary hereunder, or to authorize any person not a party to this Agreement to maintain a suit for damages of any sort pursuant to the terms or provisions of this Agreement.

9.6 Franchisee to Post Letter of Credit. Prior to commencement of any work under this Agreement, the Franchisee shall furnish to City, as beneficiary, a bond in the form of a standby irrevocable letter of credit, issued by, and drawable upon (including via fax presentment), a bank in Northern Virginia or North Carolina, reasonably acceptable in form and substance to the City Manager or his designee, and reasonably approved, as to form, by the City Attorney, for the original face amount of Fifty Thousand Dollars ($50,000), securing the faithful performance by the Franchisee of all of its obligations pursuant to this Agreement, including, but not limited to, timely payments, attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, replacement, and abandonment pursuant to this Agreement, or in fact, of the Franchisee's Facilities, within the time periods and upon the terms set forth in this Agreement. Such letter of credit shall continue from year to year and shall be in full force and effect at all times during the initial term of this Agreement and each extension thereof. The City Engineer, on behalf of the City, is authorized and may make draws upon such letter of credit if the Franchisee has failed to faithfully perform any material obligation pursuant to this Agreement. Such obligations include, but shall not be limited to, costs and expenses incurred by the City, for which the Franchisee is· obligated to reimburse to the City. Upon any draw upon the letter of credit, the Franchisee shall cause the letter of credit t6 be amended to replenish the letter of credit to the original face amount. Upon the termination or expiration of this Agreement, the letter of credit will be released upon Franchisee's written request, after confirmation by the City Engineer that the Franchisee's Facilities have been removed and all portions of the Public Rights-of-Way used by Franchisee have been restored to their condition on the Effective Date, wear and tear excepted. Such confirmation by the City Engineer shall not be unreasonably delayed, withheld, or conditioned. Any failure of the Franchisee to maintain the original face amount of the letter of credit shall constitute a default of this Agreement.

Section 10. No Assignment; No Transfer.

10.1 No Assignment Without City's Prior Consent. This Agreement and the permissions granted hereunder shall neither be assigned, transferred or sublicensed, in whole or in part, by the Franchisee to any other person or entity, nor shall the Franchisee allow any other person or entity to co-locate its facilities on or attach any type of equipment to the Franchisee's Facilities, except as permitted by this Section 10. If the Franchisee assigns, transfers or sub-licenses its rights under this Agreement in violation of this Section 10, or allows another person or entity to co-locate on or attach to the Franchisee's Facilities in violation of this Section 10, then such act shall constitute grounds for termination by the City of this Agreement, pursuant to the relevant provisions of Section 11.

10.2 Exception. Notwithstanding the foregoing, City's prior express approval shall not be required for the transfer of rights and obligations under this Agreement from the Franchisee to an Affiliate or to any entity which acquires all or substantially all of Franchisee's assets in the market defined by the FCC in which the City is located by reason of a merger, acquisition or other business reorganization provided that (i) the Franchisee is not in default at the time of the assignment; (ii) the Franchisee provides the City prompt written notice of the assignment or transfer; and (iii) such acquiring entity agrees to be bound by all of the terms and conditions of this Agreement.

Section 11. Termination and Default.

11.1 Termination. This Agreement may be terminated by either party upon thirty (30) days prior written notice of a default ("Default Notice") of any provision hereof by the other party which default is not cured pursuant to the procedures, time periods, and remedies established within Section 5.9. If the default is a breach of this Agreement not pertaining to Section 5.9, the Agreement may be terminated 30 days after the receipt of a Default Notice by the defaulting party, if the defaulting party has failed to commence to cure within such 30 day period or, upon commencing, has failed to thereafter diligently pursue such cure to completion. Subject to the rights of the owner of any applicable Approved Pole, the City may remove any of the Franchisee's Facilities, at the Franchisee's sole cost and expense, after delivery of a Default Notice and expiration of the applicable cure period, or which remain attached to Approved Poles sixty (60) days after the termination of this Agreement.

11.2 No Release. Any termination of this Agreement shall not release the Franchisee from any liability or obligation hereunder that was accruing or had accrued at the time of termination, without limitation.

11.3 Removal of Franchisee's Facilities. The Franchisee shall remove all of the Franchisee's Facilities, subject to the rights of the owner of any applicable Available Pole, at Franchisee's sole cost and expense, within sixty (60) days after the expiration or earlier termination of this Agreement, unless a written agreement otherwise is executed between the City and the Franchisee to abandon the Franchisee's Facilities in place. The Franchisee shall be responsible for repairs to any damage to the Public Rights-of-Way or City Facilities caused by such attachment, installation, control, operation, maintenance, reattachment, reinstallation, relocation, removal, and replacement by Franchisee of the Franchisee's Facilities.

Section 12. Permits.

12.1 Permits Required. Notwithstanding any provision in this Agreement to the contrary, the Franchisee is not relieved of its obligation to obtain City (and VDOT as applicable) permits. This Agreement shall not be construed to entitle Franchisee to receive any preferential consideration of any application for, or processing of, any City permit.

Section 13. Approval of Agreement by the City.

13.1 This Agreement shall not become effective unless and until the City Council approves this Agreement and it is executed on behalf of the City. If this Agreement is not approved by the City Council and executed by an authorized person, then no liability whatsoever shall accrue to the City or Franchisee and the City and Franchisee shall have no obligations whatsoever to each other under this Agreement.

Section 14. Miscellaneous Provisions.

14.1 Notices. All notices under this Agreement shall be in writing and, unless otherwise provided in this Agreement, shall be deemed validly given if sent by certified mail, return receipt requested, or via recognized overnight courier service, addressed as follows (or to any other address which the party to be notified may designate in writing to the other party by this notice method). All notices properly given as provided for in this section shall be effective upon receipt. The Notice addresses are:

FRANCHISEE:

Crown Castle Fiber LLC
2000 Corporate Drive
Canonsburg, PA 15317
Attn: Ken Simon, General Counsel

With a copy to:

Crown Castle Fiber LLC
2000 Corporate Drive
Canonsburg, PA 15317
Attn: SCN Contracts Management

CITY:

City Manager
Suite 3500
301 King Street
Alexandria, Virginia 22314

With copies to:

Office of the City Attorney
Suite 1300
301 King Street
Alexandria, Virginia 22314

and

Director
Department of Transportation & Environmental Services
Suite 4100
301 King Street
Alexandria, Virginia 22314

Should the City or the Franchisee have a change of address, the other party shall immediately be notified of such change by the notice method provided in this section, and the notice address shall be adjusted thirty (30) days after such party receives notice of such address change.

14.2 Non-Exclusive Franchise; Co-location. Neither this Agreement nor the franchise granted hereunder is exclusive. Nothing in this Agreement shall be deemed to obligate the City to grant the Franchisee permission to use any particular facility, property, or right-of-way not covered by this Agreement. No other person or entity shall be permitted to co-locate any facilities with Franchisee's Facilities, except as required by applicable law.

14.3 No Precedent. This Agreement shall apply solely to the Franchisee's Facilities, and shall neither apply to, nor establish any precedent for, any other agreements if the Franchisee seeks to use any other City property or to provide any other type of service within the City. The Franchisee shall not occupy, attach to or in any way use any City Facilities without entering into a separate written agreement acceptable to the City.

14.4 Reservation of Rights. The permissions granted by this Agreement are granted based upon representations by Franchisee that it has certain rights under federal and state law which authorize the Franchisee to construct and operate the Franchisee's Facilities as described in this Agreement. The City and Franchisee each reserve their rights, under both current law and any future changes in law, related to use of and payment of compensation for the Public Rights-of-Way and City Facilities.

14.5 Benefit to Public. The Franchisee acknowledges that the paramount use of the Public Rights-of-Way is for the benefit of the public at large. Franchisee agrees that its use of the Public Rights-of-Way shall comply with all lawful and applicable federal, state and local laws, ordinances, permit requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted or promulgated. Notwithstanding Section 7.3, which describes the process the City will pursue in the ordinary course of business, in the event immediate action is necessary, the City reserves the right to require the Franchisee to move, remove, or modify the Franchisee's Facilities at specific locations in the Public Rights-of-Way in the course of performing the City's duty to manage the Public Rights-of-Way, protect the public health, safety and welfare, and protect public property. Franchisee to conform to changes in the City's policies governing use of the Rights-of-Way or to avoid conflict with new City uses or facilities.

14.6 Role of City as Franchisor: No Waiver. The City's execution of this Franchise neither shall constitute, nor be deemed to be, governmental approval of any work or action

permitted hereby, or for any other governmental approval or consent required to be obtained from the City. Without limiting the foregoing, the issuance by the City to the Franchisee, or its contractors or agents, of any permit to perform work in the Public Rights-of- Way shall not be construed as permission by, or approval of, the City for any of the Franchisee's proposed installation of Franchisee's Facilities, unless all other applicable provisions of this Agreement have been first satisfied by the Franchisee. Nothing in this Agreement shall be construed to waive any of City's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Public Rights-of-Way or City Facilities, including, but not limited to the City's police power, right to grant or deny permits, right to collect taxes or fees, or any other power, right or obligation whatsoever. Waiver by the City of any breach or violation by the Franchisee of any provision of this Agreement shall not be deemed to be a waiver by the City of any subsequent breach or violation of the same or any other provision of this Agreement by the Franchisee.

14.7 No Waiver of Sovereign Immunity. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by City pursuant to this Agreement, nor any document which arises out of this Agreement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the City, or of its elected and appointed officials, officers and employees.

14.8 Compliance with Laws. In addition to all requirements contained herein, in the exercise of the permission granted by this Agreement, the parties shall comply with all lawful and applicable federal, state and local laws, ordinances, permit requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted, or promulgated.

14.9 Relationship of Parties. Nothing contained in this Agreement, nor any acts of the parties hereto, shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint-venture, or of any association whatsoever between City and Franchisee other than that of Franchisor and Franchisee.

14.10 Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial decision to be void, voidable, or unenforceable, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining provisions of this Agreement.

14.11 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. The courts of Alexandria, Virginia, shall be the proper fora for any disputes arising hereunder.

14.12 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter hereof. There are no representations, agreements, or understandings, whether oral or written, between the parties relating to the subject matter of this Agreement, which are not fully expressed herein. All exhibits referred to in this Agreement are incorporated into this Agreement and shall be deemed a part hereof. Upon the execution of this Agreement, the Telecommunications License Agreement between the City and Franchisee, as licensee, dated _____, 2020, shall be terminated and of no further effect.

14.13 Amendments. This Agreement shall neither be amended nor modified except by a writing signed by authorized representatives of the City and the Franchisee.

14.14 Authority. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the Franchisee and the City, respectively.

14.15 Recitals. The Recitals are incorporated into this Agreement by reference.

14.16 Rights. This Agreement shall not limit any other rights or remedies available to the parties.

14.17 Franchisee's Qualifications. Franchisee shall at all times be duly organized and validly existing, and, to the extent required by applicable law, registered to do business in the Commonwealth of Virginia.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by duly authorized representatives of the parties on the dates written below.

CITY:

THE CITY COUNCIL OF ALEXANDRIA, VIRGINIA

By:_____
Name:_____
Title:_____
Date:_____

APPROVED AS TO FORM:

By: _____
City Attorney

FRANCHISEE:

CROWN CASTLE FIBER LLC

By_____
Name:_____
Title:_____
Date:_____

EXHIBIT A

STANDARD DESIGN POLE SPECIFICATIONS